

MEDIATION AGREEMENT

This Agreement is made on: (or dated as signed)

Participants:

Party 1: *[insert]*

Legal representative of Party 1: *[insert]*

Party 2: *[insert]*

Legal representative of Party 2: *[insert]*

Mediator: *[insert]* of New Square Chambers, Lincoln's Inn, London WC2A 3SW

Mediation Day: *[insert]* **Venue:** *[insert]* **Time:** *[insert]*

Background:

- i. A dispute has arisen between the Parties as to *[insert]* ['the Dispute'].
- ii. The Parties wish to resolve matters in connection with the Dispute by mediation.
- iii. The Mediator has agreed to assist the Parties to resolve the Dispute on the terms set out in this Agreement

IT IS AGREED THAT:

1. Appointment of the Mediator

The Parties appoint the Mediator to mediate the Dispute, on the terms set out in this Agreement ['the Mediation'].

2. The Mediation

- a. The Mediation shall take place on the day and time, and at the venue, specified above (unless otherwise agreed by the Parties and the Mediator).
- b. The Parties shall in good faith attempt to resolve the dispute at the Mediation.
- c. The Parties shall attend in person, or by a duly authorised representative, with authority to settle the Dispute.
- d. The Legal Representatives may attend, or such further or other legal representatives as may be appointed.
- d. The Parties will endeavour to comply with reasonable requests made by the Mediator to promote the resolution of the Dispute.

- e. If matters are not concluded on the above day, the Mediation may, with the agreement of the Parties and Mediator, be adjourned to another time and place.

3. In advance of the Mediation

- a. In advance of the Mediation, the Mediator may communicate with the Participants, in the manner s/he considers appropriate.
- b. The Parties, whether on the invitation of the Mediator or otherwise, may provide the Mediator with such documents or information as they consider useful to resolve the dispute at Mediation (noting paragraph 3d, below).
- c. If a Party wishes to disclose, in confidence to the Mediator, any document or information, in advance of the Mediation, that Party or their Legal Representative must clearly state to the Mediator that it is confidential.
- d. The Mediator will consider the documents and information provided by the Parties in the agreed preparation time, as below.

4. The role of the Mediator

- a. The Mediator will conduct the Mediation (including any preliminary steps) in the manner s/he considers appropriate, working with the Participants, and having regard to the nature and circumstances of the Dispute.
- b. The Mediator will meet, as frequently as the Mediator decides is appropriate, with the Parties, either together or alone.
- c. The Mediator will not disclose information provided to her/him at the Mediation, by one Party in the absence of any other Party, except with the consent of the providing Party. This shall not apply to administrative information, to facilitate the Mediation, or that disclosable by law.
- d. The Mediator will not, and does not, act for any of the Parties individually, in connection with the Dispute, either during the currency of this Agreement or at any time thereafter. The Mediator confirms there is no conflict of interest, save as disclosed to and approved by the Parties.

5. Privacy and confidentiality

- a. The Mediation is private and confidential.
- b. Each Participant agrees that all statements, documents and actions made or exchanged in the course of the Mediation:
 - i. are "without prejudice" and for the purpose of negotiation only;
 - ii shall not be disclosed to any third party;
 - iii. shall not be offered as evidence in any arbitration, judicial or other proceeding.
- c. Despite paragraph 5b above, the Parties acknowledge that:
 - i. evidence that is otherwise admissible shall not be rendered inadmissible because it has been used or referred to in the Mediation;
 - ii. the occurrence of the Mediation may be disclosed to third parties, including a Court;

- iii. any settlement agreement may be lawfully enforced.
- d. Any notes made by the Mediator are confidential to the Mediator and shall not be available to the Parties at any time, nor subject to summons for production as evidence in any proceeding (and see further below).
- e. The Mediator shall destroy any notes and documents, save for the Mediation Agreement (and any documents required for the administration of her/his practice), following the Mediation.
- f. A person who is not a Participant may only attend the Mediation if:
 - i. the Parties and Mediator consent (with such consent not being required in respect of a Party's further or other legal representatives); and
 - ii. they sign a confidentiality agreement (as supplied by the Mediator).

6. Termination of the mediation

The Mediation shall be terminated:

- i. by agreement between the Parties;
- ii. if a settlement is reached by the Parties;
- iii. at any time during the Mediation, if the Mediator in her/his absolute discretion decides it should be terminated, in which case the Participants agree they shall not challenge that decision nor shall the Mediator give or be asked for a reason for the termination;
- iv. no agreement has been reached in the time available, and there is no agreement between the Parties and the Mediator as to its continuance; or
- v. a Party does not wish to continue in Mediation.

7. Settlement

- a. Any settlement agreed at Mediation will not be legally binding until the Parties, including by their duly appointed representatives, sign a settlement agreement setting out the terms thereof.
- b. The settlement agreement shall not be drafted or signed by the Mediator.
- c. The Parties are responsible for obtaining their own legal advice.

8. Mediator fees, expenses and costs

- a. The Mediator's Fees shall be:
 - i. "The Basic Fee" for the Mediation, including up to 8 hours at the Mediation and preparation of up to 4 hours, being £[insert];
 - ii. Any "Additional Fee" calculated at £[insert] per hour, where the Parties and the Mediator agree:
 - A. To continue the Mediation, if it has not concluded within the above 8 hours; or
 - B. That additional preparation time is required.

- b. Where the Mediation is adjourned (see paragraph 2e above) a further fee is to be agreed by the Parties and the Mediator.
- c. VAT is chargeable on the above fees.
- d. Unless otherwise agreed:
 - i. The Mediator's Fees will be shared equally between the Parties;
 - ii. The Basic Fee shall be paid before the commencement of the Mediation;
 - iii. Any Additional Fee is to be paid within 28 days of the invoice;
 - iv. The Legal Representative of each Party shall (for that Party) receive and pay the invoice(s) for the Mediator's Fees.
- e. If the Mediation is cancelled:
 - i. within 3 days of the date of the Mediation, the Parties shall be liable for the entire Basic Fee and any expenses already incurred prior to cancellation;
 - ii. within 4 to 10 days of the Mediation, the Parties shall be liable for 50% of the Basic Fee and any expenses already incurred prior to cancellation;
- f. The Participants shall organise and pay for the venue, and such other matters as are necessary for the conduct of the Mediation.

9. Responsibility and Liability

- a. The Mediator does not assume any responsibility, and is not liable, to any Participant for any act or omission howsoever arising, in connection with the Mediation, save for fraud or wilful misconduct, or as prescribed by law.
- b. The Mediator does not provide, and the Participants shall not assert shall that the Mediator provides or has provided:
 - i. legal or any other advice to the Participants; or
 - ii. any recommendation or proposal as to any offer or settlement.
- c. Where, despite the above, any liability attaches to the Mediator, the Participants agree that this shall be limited to a maximum of 100 times the Basic Fee.

10. Proceedings

- a. Neither the Mediator, nor any person present observing the Mediation, shall be invited or compelled by the Participants, to appear as a witness or provide documents or evidence, in any proceedings involving one or more of them, or relating in any way to the subject matter of the Mediation. No Participant shall claim any legal costs against the Mediator in such proceedings.
- b. Where the Mediator is so invited or compelled, the Participant(s) so doing shall pay to the Mediator, without reduction:
 - i. an hourly fee of £[insert] + VAT for any time spent by the Mediator, in the Mediator's absolute discretion, in connection with the matter;
 - ii. any costs (including legal costs) and expenses, incurred by the Mediator, in the Mediator's absolute discretion, in connection with the matter.

11. Data protection

The Participants consent to the Mediator processing their personal data in accordance with the Mediator's privacy policy: see

<https://www.newsquarechambers.co.uk/about/gdpr/>

12. Applicable law and jurisdiction

- a. This Mediation Agreement is governed by the law of England and Wales.
- b. The Courts of England and Wales shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement.

I agree to the terms of this Mediation Agreement:

Party 1

Name:

Signed:

Date:

Legal representative for Party 1:

Name:

Firm:

Signed:

Date:

Party 2

Name:

Signed:

Date:

Legal representative for Party 2:

Name:

Firm:

Signed:

Date:

Mediator

Name:

Signed:

Date: